APPENDIX

Letter from the Administrator of Veterans' Affairs to the Solicitor General:

Office of
The Administrator of
Veterans' Affairs

VETERANS' ADMINISTRATION,
Washington, February 16, 1942.

Honorable CHARLES FAHY,
The Solicitor General, Department of Justice, Washington, D. C.

MY DEAR MR. SOLICITOR GENERAL: I have your letter of January 19, 1942, transmitting copies of opinions of the Circuit Court of Appeals for the Seventh Circuit entered December 13, 1941, in the cases of *American National Bank and Trust Co. of Chicago, Administrator, Etc.* v. *United States,* and *Anna Shepanek, Individually and as Administratrix of the Estate of William Babicz, also known as William LaValley* v. *United States.* I note that these decisions completely repudiate the administrative interpretation of Section 305 with respect to the question presented in those cases, whereas in *Florian* v. *United States,* 114 F. 2d 990 (C. C. A. 7th), presenting the same question, but reversed on another point, the court had observed that "there would be merit in the Government's position" except for certain facts which were deemed decisive against the Government's position in that particular case.

The repudiation of the administrative interpretation and practice followed consistently since the enactment of the provisions

for the revival of insurance embodied in Section 408, War Risk Insurance Act, and Section 305, World War Veterans' Act, render the recent decisions of far-reaching importance. The reasoning of the decisions is wholly inconsistent with the basis upon which all like cases have been adjudicated heretofore, and casts a doubt upon the validity of such adjudications. Review of the adjudicated cases would present a formidable administrative task and give rise to numerous legal questions as to which the validity of the precedents has now been rendered uncertain. Likewise, in future cases, in the light of the principle established by the Supreme Court in the case of *United States* v. *McClure,* 305 U. S. 472, the view of the Circuit Court would result in greatly increased liability. The potential cost to the Government may be conservatively estimated as many millions of dollars.

More than four million contracts of yearly renewable term insurance were issued and the vast majority of them lapsed when the insureds were discharged from military or naval service. Claims for compensation have been filed in approximately one and three-quarter million cases. The first condition of Section 305 is met in the vast majority of cases in which compensation was awarded from the date of the insured's separation from service since claims were rarely made or, if made, were rarely carried to the point of actual payment of compensation prior to the lapse of insurance for nonpayment of the premium due immediately after separation from service. Thus the first condition of Section 305 is met in a very large number of cases, and

inevitably the number of cases is also large in which death has occurred or will occur at a time when compensation is uncollected by virtue of posthumous ratings of total permanent disability and for other reasons while all compensation due had been collected in full on the date of total permanent disability.

I wish to express the earnest hope that every effort will be exerted to obtain a decision by the Supreme Court of the United States upon the question involved in these cases. I am convinced the administrative practice developed concurrently with the developing legislation, embodying as it did specific recommendations made by me and my predecessor, is consistent with the contemporaneous thought of the Congress and the intent of the law.

Very truly yours,

(Sgd.) FRANK T. HINES,
Frank T. Hines,
Administrator.

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